

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

LORI ANN YANCEY, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Nos.: 3:04-CV-556
)	3:04-CV-610
)	(VARLAN/SHIRLEY)
MARTY CARSON, et al.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

This civil action is before the Court on the Plaintiffs' Motion to Refer This Case to a Federal Grand Jury [Doc. 126]. The Plaintiffs move the Court, pursuant to 18 U.S.C. § 3332(a), to refer this case to a Federal Grand Jury. The Defendant responds that: 1) Plaintiff lacks standing to assert the "relief" requested; 2) Plaintiff has no right to assert the "relief" requested; 3) Plaintiff is estopped to assert the "relief" requested; and 4) Plaintiff's request improperly seeks to circumvent or invade a power of the executive branch of the federal government contrary to the letter or spirit of Article II of the U.S. Constitution. [See Doc. 128.] For the reasons that follow, the motion [Doc. 126] will be denied.

18 U.S.C. § 3332(a) provides that "alleged offenses may be brought to the attention of the grand jury by the court." Thus, district courts are given discretion in referring cases to the federal grand jury. The Ninth Circuit held that a district court did not abuse its discretion "by failing to present [a plaintiff's] proposed complaint to a grand jury, because pursuit of indictments and prosecutions is within the exclusive discretion of the United States

Attorney.” *Brown v. Gomez*, No. 00-16612, 2001 WL 985623, at *1 (9th Cir. Aug. 28, 2001). The Sixth Circuit similarly found that “[t]he decision whether to prosecute and what charge to file or bring before a grand jury are decisions that lay within a prosecutor’s discretion.” *Mohwish v. Gentry*, Nos. 97-5331, 97-5417, 1998 WL 466567, at *2 (6th Cir. July 31, 1998) (citing *U.S. v. Oldfield*, 859 F.2d 392, 398 (6th Cir. 1988)). For similar reasons, the Court will not exercise its discretion, as provided by 18 U.S.C. § 3332(a), in the present case.

Accordingly, Defendant’s Motion to Refer this Case to a Federal Grand Jury [Doc. 126] is hereby **DENIED**.

IT IS SO ORDERED.

s/ Thomas A. Varlan
UNITED STATES DISTRICT JUDGE